

MONTANA LEGISLATIVE HISTORY

Chapter 415 19 93

Bill H 610 S _____

Original bill & history / c

H. Committee on Judiciary

Hearing Date(s) _____ c

2/17 _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Public Health

Hearing Date(s) _____ c

3/17 _____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

CHAPTER NUMBER 414

EFFECTIVE DATE: 04/19/93—SECTIONS 25, 26, 28 & 29

EFFECTIVE DATE: 07/01/93—SECTIONS 1-24 & 27

HB 610 INTRODUCED BY WHALEN
CLARIFY ENFORCEMENT AUTHORITY OF HEALTH FACILITIES DIVISION

2/12	INTRODUCED		
2/12	REFERRED TO JUDICIARY		
2/12	FIRST READING		
2/12	FISCAL NOTE REQUESTED		
2/17	HEARING		
2/17	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/22	2ND READING PASSED	77	22
2/24	3RD READING PASSED	80	19
	TRANSMITTED TO SENATE		
3/01	FIRST READING		
3/01	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/17	HEARING		
3/23	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	32	16
3/29	3RD READING CONCURRED	37	11
	RETURNED TO HOUSE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	91	7
4/02	3RD READING AMENDMENTS CONCURRED	88	11
4/13	SIGNED BY SPEAKER		
4/13	SIGNED BY PRESIDENT		
4/14	TRANSMITTED TO GOVERNOR		
4/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 415		
	EFFECTIVE DATE: 10/01/93		

HB 611 INTRODUCED BY WISEMAN
GENERALLY REVISE RESIDENTIAL LANDLORD AND TENANT LAWS

2/13	INTRODUCED		
2/13	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/13	FIRST READING		
2/17	HEARING		
2/17	TABLED IN COMMITTEE		

HB 612 INTRODUCED BY DOLEZAL
PROTECT CONSUMERS FROM TELEPHONE SOLICITATION FRAUD AND
UNDUE PRESSURE

2/13	INTRODUCED		
2/13	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/13	FIRST READING		
2/13	FISCAL NOTE REQUESTED		
2/17	HEARING		
2/17	TABLED IN COMMITTEE		
2/19	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		

HB 613 INTRODUCED BY EWER
GENERALLY REVISE LOCAL GOVERNMENT GENERAL OBLIGATION AND
REVENUE BONDS

2/13	INTRODUCED		
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HOUSE BILL NO. 610
INTRODUCED BY WHALEN

IN THE HOUSE

FEBRUARY 12, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 20, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 22, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 24, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 80; NOES, 19.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY.
	FIRST READING.
MARCH 23, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 25, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 29, 1993	THIRD READING, CONCURRED IN. AYES, 36; NOES, 11.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
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APRIL 2, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 610
2 INTRODUCED BY Whalen
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
5 ENFORCEMENT AUTHORITY OF THE DEPARTMENT OF HEALTH AND
6 ENVIRONMENTAL SCIENCES REGARDING HEALTH CARE FACILITIES;
7 AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
8 SCIENCES TO IMPOSE AND COLLECT CIVIL AND ADMINISTRATIVE
9 PENALTIES FOR STATUTORY AND REGULATORY VIOLATIONS; GRANTING
10 THE DEPARTMENT ADMINISTRATIVE ORDER AUTHORITY; PROVIDING FOR
11 RECEIVERSHIP; CLARIFYING CRIMINAL PENALTY PROVISIONS;
12 CREATING A PATIENT PROTECTION ACCOUNT; PROVIDING FOR A
13 STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502,
14 50-5-103, 50-5-108, 50-5-201, AND 50-5-207, MCA; AND
15 REPEALING SECTIONS 50-5-109, 50-5-221, 50-5-229, 50-5-230,
16 AND 50-5-231, MCA."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 NEW SECTION. Section 1. Prohibited activities. It is
20 unlawful to:

- 21 (1) operate a facility without a license;
22 (2) prevent, interfere with, or impede department
23 investigation, department enforcement, department
24 examination of relevant books and records, or activities of
25 the department concerning the preservation of evidence; or

1 (3) violate any provision of part 1 or 2 of this
2 chapter or violate a rule, license provision, or order
3 adopted or issued pursuant to part 1 or 2.

4 NEW SECTION. Section 2. Civil penalties. (1) A person
5 who commits an act prohibited by [section 1] is subject to a
6 civil penalty not to exceed \$1,000 for each violation. Each
7 day of each violation constitutes a separate offense. The
8 department or, upon request of the department, the county
9 attorney of the county in which the health care facility in
10 question is located may petition the court to impose the
11 civil penalty. Venue for an action to collect a civil
12 penalty pursuant to this section is in the county in which
13 the facility is located or in the first judicial district.

14 (2) A penalty collected under this section must be
15 deposited in the patient protection account provided for in
16 [section 7].

17 (3) In addition to or exclusive of the remedy provided
18 in subsection (1), the department may pursue remedies
19 available for a violation as provided for in 50-5-108 or any
20 other remedies available to it.

21 NEW SECTION. Section 3. Criminal penalties. (1) A
22 person is guilty of an offense under this section if the
23 person knowingly:

- 24 (a) commits an act prohibited by [section 1];
25 (b) omits material information or makes a false

statement or representation in an application, record, report, or other document filed, maintained, or used for compliance with the provisions of part 1 or 2 of this chapter or with rules, license provisions, or orders adopted or issued pursuant to part 1 or 2; or

(c) destroys, alters, conceals, or fails to file or maintain any record, information, or application required to be maintained or filed in compliance with a provision of part 1 or 2 of this chapter or in compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) A person guilty of an offense under subsection (1) is subject to a fine of not more than \$1,000 for the first offense and not more than \$2,000 for each subsequent offense. Each day of each violation constitutes a separate violation.

(3) Action under this section does not bar enforcement under any other section of this chapter or pursuit of any other appropriate remedy by the department.

(4) Venue for an action to collect a penalty pursuant to this section is in the county in which the facility is located or in the first judicial district.

(5) A penalty collected under this section must be deposited in the patient protection account provided for in [section 7].

NEW SECTION. Section 4. Administrative enforcement --
notice -- order for corrective action -- administrative
penalty. (1) If the department believes that a violation of a provision of part 1 or 2 of this chapter or of a rule adopted or a condition or limitation imposed by a license issued pursuant to part 1 or 2 has occurred, it may serve written notice on the alleged violator or the violator's agent personally or by certified mail. The notice must specify the provision of part 1 or 2 of this chapter or the rule or license condition or limitation alleged to have been violated and the facts alleged to constitute the violation. The notice may include an order to take necessary corrective action, including ceasing new admissions, relocating residents, or ceasing the violation within a reasonable period of time stated in the order, or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Until issuance of a contrary decision by the board, a department order concerning corrective action remains effective and enforceable.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall issue an appropriate order for the prevention, abatement, or control

1 of the violation involved or the taking of other corrective
 2 action or an order for the assessment of an administrative
 3 penalty, or both. As appropriate, an order issued as part of
 4 a notice or after a hearing may prescribe the date by which
 5 the violation must cease; time limits for particular action
 6 in preventing, abating, or controlling the violation; or the
 7 date by which the administrative penalty must be paid. If,
 8 after a hearing on an order contained in a notice, the board
 9 finds that a violation has not occurred or is not occurring,
 10 it shall declare the department order void.

11 (3) An order issued pursuant to this section may impose
 12 an administrative penalty of not more than \$1,000 for each
 13 violation. Each day of each violation constitutes a separate
 14 offense.

15 (4) In determining the amount of penalty to be assessed
 16 for an alleged violation under this section, the department
 17 or the board, as appropriate, shall consider:

18 (a) the gravity of the violation in terms of the degree
 19 of physical or mental harm to a resident or patient; the
 20 degree of harm to the health, safety, rights, security, or
 21 welfare of a resident or patient; and the degree of
 22 deviation committed by the facility from a requirement
 23 imposed by part 1 or 2 of this chapter or by a rule, license
 24 provision, or order adopted or issued pursuant to part 1 or
 25 2;

1 (b) whether the amount of the penalty serves as a
 2 deterrent relative to the alleged violator's ability to pay;

3 (c) the economic benefit or savings, if any, to the
 4 alleged violator as a result of noncompliance; and

5 (d) other matters as justice may require.

6 (5) The contested case provisions of the Montana
 7 Administrative Procedure Act, Title 2, chapter 4, part 6,
 8 apply to a hearing conducted pursuant to this section.

9 (6) Instead of or in addition to issuing the order
 10 provided for in subsection (1), the department may:

11 (a) require that the alleged violators appear before
 12 the board for a hearing at a time and place specified in the
 13 notice and answer the charges; or

14 (b) initiate action under any other applicable
 15 provisions of part 1 or 2 of this chapter.

16 (7) This chapter does not prevent the department from
 17 making efforts to obtain voluntary compliance through
 18 warning, conference, or any other appropriate means.

19 (8) In connection with a hearing held pursuant to this
 20 section, the board may and on application by a party shall
 21 compel the attendance of witnesses and the production of
 22 evidence on behalf of any party.

23 (9) An administrative penalty collected pursuant to
 24 this section must be deposited in the patient protection
 25 account provided for in [section 7].

1 **NEW SECTION. Section 5. Receiverships.** (1) Upon notice
 2 to the facility, the department may file a complaint in
 3 district court for receivership under any of the following
 4 conditions in addition to applicable conditions listed in
 5 27-20-102:

6 (a) a facility is operating without a license and
 7 residents are in danger of serious physical or mental harm;

8 (b) a facility intending to close has not made
 9 arrangements within 30 days before closure for the orderly
 10 transfer of residents;

11 (c) a facility is abandoned by an owner;

12 (d) a life threatening situation exists for the
 13 residents of the facility; or

14 (e) a facility has repeatedly violated the provisions
 15 of Title 50, chapter 5, part 1 or 2, or both, or the rules
 16 implementing those provisions.

17 (2) If a condition specified in subsection (1)(c) or
 18 (1)(d) exists, a resident or a resident's legal guardian or
 19 family member may initiate receivership proceedings after
 20 first giving reasonable notice of the proceedings to the
 21 department and giving the department an opportunity to
 22 respond to the conditions.

23 (3) In the event of an emergency, within the discretion
 24 of the department, a receiver may be appointed upon an ex
 25 parte application by the department. If a receiver is

1 appointed upon an ex parte application, notice must be given
 2 by the department to the facility within 24 hours of
 3 issuance of the receivership order and a hearing must be
 4 offered the facility by the court within 10 days of issuance
 5 of the order to determine whether the order will be
 6 continued.

7 (4) The department shall maintain a list of persons
 8 qualified to act as receivers.

9 (5) The selection, appointment, and removal of
 10 receivers must be consistent with Title 27, chapter 20,
 11 parts 2 and 3.

12 (6) Whenever possible, receivers must be paid from the
 13 income of the facility; however, receivers may be paid from
 14 the patient protection account provided for in [section 7].
 15 The court shall direct the amount of payments to be made to
 16 the receiver, the payments to be made by the receiver, and
 17 the order of payments made to the receiver or to other
 18 entities. Payments owed to a facility that are made to the
 19 receiver must be used to discharge any obligation of the
 20 entity making the payments owed to the facility.

21 (7) The powers and duties of the receiver include:

22 (a) the duty to protect the health, welfare, and safety
 23 of the residents;

24 (b) the power to hire, discipline, and fire staff;

25 (c) the power to collect debts due to the facility;

(d) the power to settle labor disputes;

(e) the power to petition the court to set aside unreasonable contracts or leases entered into by the facility management;

(f) the power to make capital investments in the facility with court approval; and

(g) all other powers granted receivers by 27-20-302.

NEW SECTION. Section 6. Facility inspections. (1) In addition to its annual licensure inspections, as provided by 50-5-204, the department may inspect any facility for compliance with part 1 or 2 of this chapter or for compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) An authorized representative of the department may inspect a facility and associated property without prior notice to the owner or staff of the facility whenever the department considers it necessary. The authorized representative must be given access to all records and an opportunity to copy the records.

NEW SECTION. Section 7. Patient protection account.

(1) There is a patient protection account in the state special revenue fund. The money in the account is statutorily appropriated to the department as provided in 17-7-502.

(2) There is deposited in the patient protection

account:

(a) penalties collected pursuant to part 1 or 2 of this chapter;

(b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source that are intended to be used for the purposes of the account; and

(c) interest earned on money in the account.

(3) The funds deposited in the patient protection account may be used only:

(a) to administer parts 1 and 2 of this chapter, including department expenses associated with administration;

(b) to pay for the cost of department-initiated relocation of residents;

(c) to pay for receivers as provided under [section 5(6)].

Section 8. Section 17-7-502, MCA, is amended to read:

***17-7-502. Statutory appropriations -- definition --** requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both

1 of the following provisions:

2 (a) The law containing the statutory authority must be
3 listed in subsection (3).

4 (b) The law or portion of the law making a statutory
5 appropriation must specifically state that a statutory
6 appropriation is made as provided in this section.

7 (3) The following laws are the only laws containing
8 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
9 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
10 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;
11 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
12 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
13 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;
14 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
15 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;
16 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;
17 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
18 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;
19 39-71-2504; 44-12-206; 44-13-102; [section 7]; 53-6-150;
20 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507;
21 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103;
22 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301;
23 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

24 (4) There is a statutory appropriation to pay the
25 principal, interest, premiums, and costs of issuing, paying,

1 and securing all bonds, notes, or other obligations, as due,
2 that have been authorized and issued pursuant to the laws of
3 Montana. Agencies that have entered into agreements
4 authorized by the laws of Montana to pay the state
5 treasurer, for deposit in accordance with 17-2-101 through
6 17-2-107, as determined by the state treasurer, an amount
7 sufficient to pay the principal and interest as due on the
8 bonds or notes have statutory appropriation authority for
9 the payments. (In subsection (3): pursuant to sec. 7, Ch.
10 567, L. 1991, the inclusion of 19-6-709 terminates upon
11 death of last recipient eligible for supplemental benefit;
12 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
13 22-3-811 terminates June 30, 1993.)"

14 **Section 9.** Section 50-5-103, MCA, is amended to read:

15 "50-5-103. Rules and standards -- accreditation by
16 joint commission. (1) The department shall promulgate and
17 adopt rules and minimum standards for implementation of
18 parts 1 through-4 and 2.

19 (2) Any facility covered by this chapter shall comply
20 with the state and federal requirements relating to
21 construction, equipment, and fire and life safety.

22 (3) The department shall extend a reasonable time for
23 compliance with rules for parts 1 through-4-after and 2 upon
24 adoption.

25 (4) Any hospital that furnishes written evidence,

1 including the recommendation for future compliance
 2 statements to the department of its accreditation granted by
 3 the joint commission on accreditation of hospitals health
 4 care organizations, is eligible for licensure in the state
 5 for the accreditation period and may not be subjected to an
 6 inspection by the department, ~~except that the~~ for purposes
 7 of the licensing process. The department may, in addition to
 8 its inspection authority in [section 6], inspect any
 9 licensed health care facility to answer specific complaints
 10 made in writing by any person against the facility when such
 11 the complaints pertain to licensing requirements. Inspection
 12 by the department upon such a specific complaint made in
 13 writing pertaining to licensing requirements shall--be is
 14 limited to the specific area or condition of the health care
 15 facility to which the complaint pertains.

16 (5) The department may consider as eligible for
 17 licensure during the accreditation period any health care
 18 facility, other than a hospital, that furnishes written
 19 evidence, including the recommendation for future compliance
 20 statements, of its accreditation by the joint commission on
 21 accreditation of health care organizations. The department
 22 may inspect a health care facility considered eligible for
 23 licensure under this section to ensure compliance with state
 24 licensure standards."

25 **Section 10.** Section 50-5-108, MCA, is amended to read:

1 **"50-5-108. Injunction. (1)** The department, ~~on advice of~~
 2 ~~the--attorney-general,~~ may bring an action for injunction or
 3 other process against any person to ~~restrain or prevent--the~~
 4 ~~establishment,--conduct,--management,--or--operation--of--a~~
 5 ~~facility which is in violation of any provision of--parts--1~~
 6 ~~or 4 of this chapter;~~

7 (a) restrain a facility from engaging in a prohibited
 8 activity that is endangering the health, safety, or welfare
 9 of any individual under the care of the facility;

10 (b) enjoin a violation of part 1 or 2 of this chapter,
 11 or a violation of a rule, license provision, or order
 12 adopted or issued pursuant to part 1 or 2; or

13 (c) require compliance with part 1 or 2 of this chapter
 14 or compliance with a rule, license provision, or order
 15 adopted or issued pursuant to part 1 or 2.

16 (2) A court may award the department costs, reasonable
 17 attorney fees, and expenses incurred in investigating,
 18 abating, or enjoining a violation of or enforcing part 1 or
 19 2 of this chapter or a rule, license provision, or order
 20 adopted or issued pursuant to part 1 or 2.

21 (3) Costs, attorney fees, and expenses awarded to the
 22 department pursuant to this section must be deposited in the
 23 patient protection account provided for in [section 7]."

24 **Section 11.** Section 50-5-201, MCA, is amended to read:

25 **"50-5-201. License requirements. (1)** A facility or

licensee who-contemplates considering construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) No A person may not operate a health care facility unless the facility is licensed by the department. Licenses may be issued for a period of 1 to 3 years in duration. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of a facility, the license must be returned to the department.

(4) Licenses shall must be displayed in a conspicuous place near the admitting office of the facility."

Section 12. Section 50-5-207, MCA, is amended to read:

"50-5-207. Denial, suspension, or revocation of health care facility license -- provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified

by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without his the patient's consent.

(h) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined minimum--standards--are--not-being-met that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of

1 need requirements of part 3.

2 (4) The department may provide in its revocation order
3 that the revocation will be in effect for up to 2 years. If
4 this provision is appealed, it must be affirmed or reversed
5 by the board."

6 **NEW SECTION. Section 13. Repealer.** Sections 50-5-109,
7 50-5-221, 50-5-229, 50-5-230, and 50-5-231, MCA, are
8 repealed.

9 **NEW SECTION. Section 14. Codification instruction.** (1)
10 [Sections 1 through 6] are intended to be codified as an
11 integral part of Title 50, chapter 5, part 1, and the
12 provisions of Title 50, chapter 5, part 1, apply to
13 [sections 1 through 6].

14 (2) [Section 7] is intended to be codified as an
15 integral part of Title 50, chapter 5, part 2, and the
16 provisions of Title 50, chapter 5, part 2, apply to [section
17 7].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0610, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for the enforcement authority of the Department of Health and Environmental Sciences regrading Health Care Facilities; authorizing the Department of Health and Environmental Sciences to impose and collect civil and administrative penalties for statutory and regulatory violations; granting the Department administrative order authority; providing for receivership; clarifying criminal penalty provisions; creating a patient protection account; and providing for a statutory appropriation.

ASSUMPTIONS:

1. Civil and/or criminal penalties may be collected under provisions of this bill, but it is impossible to assume penalties.
2. Any penalties collected will be deposited in the new patient protection account and used for relocation of residents initiated by the Department of Health and Environmental Sciences and/or to pay for receivers.

FISCAL IMPACT:

Fiscal impact is unknown.

David Lewis 2-16-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Timothy J. Whalen 2/17

TIMOTHY J. WHALEN, PRIMARY SPONSOR DATE

Fiscal Note for HB0610, as introduced

HB 610

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on February 17, 1993,
at 7:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 603, HB 598, HB 633, HB 547, HJR 21
HB 487, HB 22, HB 602, HB 624, HB 610
HB 620
Executive Action: HB 582, HB 597, HB 157, HB 416, HB 554
HB 562, HB 598, HB 603

REP. RICE pointed out that federal regulations require realtors to disclose that information and that realtors must avoid the risk of language of immunity.

Closing by Sponsor: None

HEARING ON HB 624

Opening Statement by Sponsor:

JOHN COBB, House District 42, Augusta, noted that this bill revises the procedural provisions of the Human Rights Laws.

Proponents' Testimony:

Anne MacIntyre, Human Rights Commission, presented written testimony. EXHIBITS 14 and 15

Ken Toole, Human Rights Network, said that he believes there are two systems of justice in our country. One of them is hiring a lawyer; but because many people can't afford to hire a lawyer, that person can go to the Human Rights Commission.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON HB 610

Opening Statement by Sponsor:

REP. TIM WHALEN, House District 93, Billings, explained that HB 610 is the result of the collaboration of the Department of Health and Environmental Sciences (DHES) and the Coalition for Nursing Home Reform. REP. WHALEN said that proponents would discuss the bill in more detail.

Proponents' Testimony:

Katherine Orr, Chief Counsel, DHES, said this bill applies to health care facilities, including hospitals, nursing homes, hospices, home care agencies, etc. It reflects a clarification of what exists in the law now. The new section, Section 2, is an analysis and the basis for collecting penalties from counties.

She emphasized that HB 610 is a spectrum of tools available to DHES, and she proposed amendments. **EXHIBIT 16**

Bob Olson, Montana Hospital Association (MHA), said that MHA believes this is a very good bill but is concerned that it will create a single department as the policeman, judge and the jury.

On record in support of HB 610:

Mike Craig, Bureau Chief, DHES

Melissa Case, Montana Coalition for Nursing Home Reform

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. SMITH asked Ms. Orr if this bill is to be applied to all health care facilities and whether all rules in the policy manual are basically the same for all facilities. Ms. Orr said it includes nursing homes, home health agencies, and hospitals. Each facility has a different level of care, different instructions, standards.

REP. SMITH said that she had heard that some facilities, primarily hospitals, are reviewed by two or three different entities, i.e., Medicare, state review, etc. This can be very costly, and each reviewing entity requires something different of each facility; this puts a demand on the consumer. Ms. Orr said entities do act as the government's contracting agency, and the state tries to remove a layer of regulation there. However, because DHES is short on resources and funding, they try to enter into voluntary compliance.

REP. VOGEL asked REP. WHALEN if the bill has been discussed with these health facilities. REP. WHALEN asked if the Administrator of the Montana Nursing Home Association has taken a position on the bill. The administrator indicated she hadn't had time to thoroughly review it, but it was something she felt was probably the state following current federal regulations, and she hadn't seen any major problems.

Closing by Sponsor: None

HEARING ON HB 620

Opening Statement by Sponsor:

REP. WHALEN, House District 93, Billings, introduced HB 620 as modeled after HB 887 which REP. WHALEN and REP. TOOLE sponsored in the 1991 session. Changes were made in that bill, and those

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

2/17/93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles			✓
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

wp.rollcall.man

CS-09

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 610
DATE Feb. 17, 1993 SPONSOR(S) T. Whalen

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Linda Sandman	DAES	X	
Melissa Case	Montana Coalition for Nursing Home Reform	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

EXHIBIT 16

DATE 2-17-93

SB HB 610

Amendments to House Bill 610 (Whalen)

1. Page 10, line 2.
After: "penalties"
insert: ", costs, and fees"
2. Page 15, line 6.
After: "~~net~~"
insert: "not"
3. Page 16, line 15.
After: "patient's"
insert: "or resident's"
4. Page 17, line 5.
After: "board"
insert: "or appropriate court of law"

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on February 18, 1993,
at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: Rep. Scott McCulloch (D)

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 638
Executive Action: HJR 22, HB 507, HB 518, HJR 21
✓ HB 620, HB 602, HB 487, HB 610
HB 633

Motion/Vote: REP. BROWN MOVED HB 487 DO PASS AS AMENDED. Motion carried 10-8. Those voting against the motion were REPS. BIRD, BROWN, BROOKE, RICE, RUSSELL, TOOLE, WHALEN, and WYATT.

EXECUTIVE ACTION ON HB 610

Motion: REP. WHALEN MOVED HB 610 DO PASS.

Discussion:

REP. WHALEN proposed amendments and Mr. MacMaster explained them to the committee. These are amendments that REP. WHALEN and CHAIRMAN FAGG asked the Department of Health and Environmental Sciences (DHES) to work out with Doug Olsen, Montana Independent Bankers Association. EXHIBIT 4

Motion/Vote: REP. WHALEN moved the amendments. Amendments carried unanimously.

REP. WHALEN disbursed another set of amendments, and Mr. MacMaster explained the difference in this set from the first set. These amendments are clean-up amendments. Mr. MacMaster said the person who drafted these amendments is familiar with health insurance law, but not criminal law; therefore, the amendments consist of criminal terminology. EXHIBIT 5

REP. WHALEN offered amendments with the criminal penalties going where they should and asked Mr. MacMaster to prepare those amendments.

Motion: REP. CLARK moved to strike section 7 from the bill.

Discussion:

REP. CLARK'S intention is to remove the patient protection account; he would like to take the fine imposed in a criminal conviction and have that money go where all other criminal offense fines are allotted, rather than the patient protection fund. REP. CLARK added that he also does not like earmarked funds going toward the patient protection fund. Mr. MacMaster agreed with that but then explained that there are also other places where civil penalties in various civil proceedings also go to the patient protection fund. He said that those references would also have to be deleted from the bill, and REP. CLARK affirmed that would be his intention.

REP. WHALEN said, for clarification purposes, as soon as Mr. MacMaster explained the list of amendments, he would like to vote on those amendments with the exception of those amendments having to do with section 7.

Motion/Vote: REP. WHALEN moved the amendments being explained by Mr. MacMaster with the exception of section 7. Amendments carried unanimously.

Motion/Vote: REP. CLARK moved to strike section 7 from the bill and any reference to civil fines also.

Discussion:

REP. BROWN isn't clear on what REP. CLARK'S motion is and asked him if he is striking out all civil fines, or the civil fines allotted according to code distribution. He is also concerned that REP. CLARK wants to create another statutory account; however, on page 10, subsection (b), line 4, one of the main reasons for having this kind of account is so that if there are gifts or grants or other reimbursements, there is a place to put them. Without a statutory appropriation, a person can't receive gifts or grants, etc. REP. BROWN recommended striking lines 2 and 3 on page 10.

Motion/Vote: REP. WHALEN moved a substitute motion to eliminate subparagraph (a) and renumber the following sections on page 10, line 2 and 3 of the bill which would be the penalty collected under the administrative enforcement provision of the bill; a new section would be added or any section would be modified that requires these penalties that go under the general fund. Amendment carried unanimously.

With all that has taken place in this bill, REP. WINSLOW said there is still no definitive answer as to what the real purpose of this bill is, and she moved to table the bill.

Motion: REP. WINSLOW MOVED A SUBSTITUTE MOTION THAT HB 610 BE TABLED.

Discussion:

REP. SMITH thinks there is a great need for direction in this area, and waiting two years, till the next legislative session, will be very devastating to the residents in health facilities, She opposes the table motion.

CHAIRMAN FAGG spoke in favor of tabling the bill mainly because the people who have written amendments have not agreed with each other, and the committee is dealing with information that they don't completely understand.

Vote: HB 610 BE TABLED. Motion failed 7-10 with REP. BIRD excused from voting. Those voting no to the table motion were REPS. VOGEL, BROWN, BROOKE, GRIMES, MCCULLOCH, RUSSELL, SMITH, TOOLE, WHALEN, and WYATT.

Motion: REP. WHALEN MOVED HB 610 DO PASS AS AMENDED.

Motion/Vote: REP. RICE moved an amendment to require that the notice contains the right to apply in writing within 30 days for a hearing. Motion carried unanimously.

Vote: HB 610 DO PASS AS AMENDED. Motion carried 12-5 with REP. BIRD excused from voting. Those voting against the do pass motion were REPS. BERGMAN, CLARK, RICE, TASH, and WINSLOW.

EXECUTIVE ACTION ON HB 633

Motion: REP. RUSSELL MOVED HB 633 DO PASS.

Discussion:

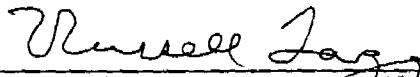
Ms. Beverly Gibson, Assistant Executive Director, Montana Association of Counties (MACo), explained that she had not had a chance to speak to the committee during the scheduled hearing; she presented her testimony to the committee during executive action. EXHIBIT 6

REP. VOGEL asked REP. RUSSELL if it is her intention to totally eliminate the mentally ill from incarceration. REP. RUSSELL said the intent is to give them more appropriate attention, such as rehabilitation, rather than incarceration. These people have committed minor misdemeanors. REP. VOGEL agrees with her, but he reiterated that there are times when law enforcement doesn't have a facility immediately available, and as a remedy to the immediate situation, there has to be a holding area until a facility is available. He is referring to the small towns in which there are not enough facilities. Rather than eliminating incarceration in a prison, the mentally ill must be detained in a safe facility.

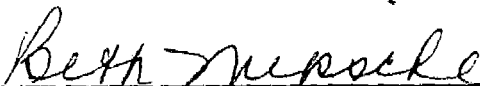
Vote: HB 633 DO PASS. Motion carried 17-1 with REP. BROWN voting no.

ADJOURNMENT

Adjournment: 12:00 p.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHÉ, Secretary

RF/bcm

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Senator Dorothy Eck, Chair, on March 17, 1993,
at 3:10 p.m.

ROLL CALL

Members Present:

Sen. Dorothy Eck, Chair (D)
Sen. Eve Franklin, Vice Chair (D)
Sen. Chris Christiaens (D)
Sen. Tom Hager (R)
Sen. Terry Klampe (D)
Sen. Kenneth Mesaros (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Hager

Members Absent: None.

Staff Present: Tom Gomez, Legislative Council
Laura Turman, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 107, HB 610, HJR 4
Executive Action: SB 177, HB 118, HB 168

EXECUTIVE ACTION ON SB 177

Discussion:

Chairman Eck said SB 177 had been amended into SB 305.

Motion/Vote:

Sen. Christiaens moved to TABLE SB 177. The motion carried
UNANIMOUSLY.

EXECUTIVE ACTION ON HB 168

Discussion:

Sen. Christiaens asked Rep. Cobb if HB 107 would save money. Rep. Cobb said there would not because they return the \$1000.00. They do not think it is appropriate for the Legislative Audit Committee to do the Sunrise audits.

Chairman Eck said she would hesitate to act on HB 107 while Sen. Hager is not present. Chairman Eck asked Rep. Cobb if he had discussed the bill with Sen. Hager. Rep. Cobb said he hadn't. He is trying to keep the bill quiet.

Chairman Eck said the Public Health Committee did not want to do the Sunrise audits either. Chairman Eck asked Tom Gomez if the audits had made a difference in the number of licensing bills that come through. Mr. Gomez said he had staffed the Public Health Committee since 1987, and there has been a significant change in terms of proposed bills subject to a Sunrise audit. In prior sessions, bills would come to this Committee and some members of the Committee tabled bills on the grounds that they had not had a Sunrise audit. The purpose of the Sunrise audit was to deal with the numerous applications of different groups for licensure.

Closing by Sponsor:

Rep. Cobb said the audits clean up bills which go to the House and the Senate anyway. The Legislative Audit Committee does not want to do the Sunrise audits, and they feel it is illegal to charge \$1000.00. They will keep doing it if they have to.

HEARING ON HB 610

Opening Statement by Sponsor:

Rep. Tim Whalen, House District 93, said HB 610 stems from an effort from the Nursing Home Coalition and the Department of Health and Environmental Sciences (DHES). Amendments were added in the House Judiciary Committee to satisfy concerns from the Montana Hospital Association, and the Montana Health Care Association. HB 610 gives the Department of Health enforcement capabilities for civil penalties and criminal penalties. It also provides criteria for receivership of a facility, and it sets up a patient account for a source of funds to enforce the bill. Rep. Whalen called the Committee's attention to Section 6 of HB 610 which covers inspections of facilities.

Proponents' Testimony:

Katherine Orr, Chief Council for the Department of Health, said the purpose of HB 610 is to consolidate the remedies available to the Department in the regulation of health care facilities. Some current remedies are in conflict with existing law. HB 610

clarifies what "prohibited acts" are for the purpose of criminal penalties and civil penalties. The Department would have administrative order authority which would allow them to expediently respond to a violation. In addition, the Department would have receivership authority for serious conditions. Ms. Orr provided amendments prepared with Rep. Whalen. (Exhibit #1) Ms. Orr went over the amendments.

Denzel Davis, Administrator of the Health Facilities Division, DHES, pointed out the current statues allow for only "all or nothing" situations. If a facility is found to be out of compliance, the Department can deny, suspend or revoke. These actions are costly and not very expedient. Mr. Davis said HB 610 gives DHES the authority to go into facilities that are not licensed. Currently, they may not go in without a court order. He said the administrative action portion of HB 610 is the most important part of the bill. Mr. Davis said he was "quite disturbed" when the patient protection fund was amended out of the bill. The fund would not be a large fund. The funds will be used for receivership and moving residents out of the facility. These are good uses for the funds. He urged the Committee to concur with HB 610.

Rose Hughes, Executive Director of the Montana Health Care Association, said the Association represents nursing homes throughout the state of Montana. Ms. Hughes said the Association supports the ability of the Agency to do their job, and there is a need for a range of enforcement activities. The bill was extensively amended in the House to address the concerns of the Association. Ms. Hughes said she had no problems with the amendments.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Sen. Klampe asked Denzel Davis what was the size of fines collected. Mr. Davis said \$1000.00 could be collected per violation. Prior to HB 610, no fines were collected. Only one action has been taken against a facility during the last six years.

Sen. Klampe asked Mr. Davis if, with the passage of HB 610, more actions are expected. Mr. Davis said no, there will be no change in operation.

Sen. Mesaros asked Mr. Davis if a \$1000.00 fine would help a facility come into compliance. Mr. Davis said the first steps in dealing with a facility are on the administrative level. If a facility refuses to comply, civil and criminal charges come into

place.

Chairman Eck asked Mr. Davis if the stricken language on Pages 5 and 6 would weaken the bill. Mr. Davis said no, the new enforcement section is the best part of HB 610. The stricken language took out administrative penalties.

Chairman Eck asked Mr. Davis which of the House amendments would limit the enforcement capabilities. Mr. Davis said the original amendments pertained to language that needed to be worked out, and that was done. There was an amendment to take out the patient protection account, so that fines would go to the general fund.

Sen. Mesaros asked Mr. Davis if there were presently a patient protection account. Mr. Davis said they currently did not have that type of account.

Sen. Christiaens asked Mr. Davis how receivership had been paid for in the past. Mr. Davis said they have not taken receivership of a facility. They did not have the funds to do it. Their only option was to close facilities. HB 610 gives additional remedies.

Sen. Towe asked Rose Hughes if she had seen the amendments. Ms. Hughes said she had.

Sen. Towe asked Ms. Hughes if she "reluctantly" accepted the amendments. Ms. Hughes said she did not have a problem with the amendments.

Sen. Towe asked Ms. Hughes if she had any comments about the patient protection account versus fines going to the general fund. Ms. Hughes said this is not a unique concept. Federal law specifically states, in respect with nursing facilities, that fines collected will go to a patient protection account. Aside from this, she said there are no strong feelings about whether the fines collected would go to a patient protection account or to the general fund.

Sen. Towe asked Mr. Davis if the amendments (Exhibit #1) reversed some of the action taken on HB 610 in the House. Mr. Davis said that was correct. Essentially, the two big issues were putting back in the patient protection account, and reworking the language regarding attorney's fees in Section 2.

Sen. Towe asked Mr. Davis if there would be no attorney's fees. Mr. Davis said that was correct.

Chairman Eck asked Mr. Davis to describe the kinds inspections of the facilities, and if the Department of Health has the funds to do the inspections. Mr. Davis said funding is always an issue, and he does not know if HB 610 will reduce the Department's ability to enforce, because they currently have no enforcement

abilities.

Chairman Eck asked Mr. Davis what was done when the Department received a complaint about a facility. Mr. Davis said there are quite a few complaints, and many of those are handled by the Medicaid/Medicare Certification Division. Complaints are investigated and followed up.

Chairman Eck asked Mr. Davis if the Department had adequate staff for the inspections. Mr. Davis said the "real" answer was no. SB 403 sponsored by Sen. Rye identifies the array of licensed facilities under the category of "out-patient" facilities. The Department does not have the staff to take care of out-patient facilities, but they have the staff needed for HB 610.

Closing by Sponsor:

Sen. Rye closed for Rep. Whalen.

HEARING ON HJR 4

Opening Statement by Sponsor:

Rep. Beverly Barnhart said HJR encourages the citizens of Montana say it is a good idea for Montana State University to adopt a nurse practitioner program. The program will not cost the state of Montana any money. Currently, MSU has a nursing degree program, but there is no place in Montana that provides nurse practitioner training.

Proponents' Testimony:

Verner Bertelsen, Legacy Legislature, said they strongly support HJR 4. Mr. Bertelsen discussed the last mock legislative session put on by the Legacy Legislature, where HJR 4 was a priority piece of legislation. HJR 4 will help improve medical services in Montana's rural areas.

Kip Smith, Director of Development of the Montana Primary Care Association, said the Association represents rural health clinics in Montana. These clinics use extensively mid-level practitioners, and they strongly support HJR 4. Most of the state of Montana is considered "frontier" and the rest, "rural." Mr. Smith said recruiting mid-level practitioners in rural areas is challenging. In Montana, primary care providers include nurse practitioners, physician assistants, mid-wives and physicians. It is important to identify those who are willing to take additional training and return to the rural areas of the state. To be the most successful, the programs must be available in the state. Mr. Smith encouraged the Committee to Concur in HJR 4.

ROLL CALL

SENATE COMMITTEE Public Health DATE 3-17-93

[illegible]

AMENDMENTS TO HOUSE BILL 610
FOR SENATE PUBLIC HEALTH
(Introduced by Tim Whalen)

SENATE HEALTH & WELFARE
EXHIBIT NO. 1
DATE 3-17-93
BILL NO. HB #610

1. Page 1, line 8.
Strike: "AND ADMINISTRATIVE"
2. Page 2, lines 5 through 7.
Following: "[section 1]" on line 5
Strike: "THAT" on line 5 through "PERSON" on line 7.
3. Page 2, line 21.
Strike: "GENERAL FUND"
Insert: "patient protection account provided for in [section 7]"
4. Page 2, line 19.
Following: line 18
Insert: "(2) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider
(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient, the degree of harm to the health, safety, rights, security, or welfare of a resident or patient; and the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2;
(b) other matters as justice may require."
5. Page 2, line 19.
Strike: "(2)"
Insert: "(3)".
6. Page 3, line 5.
Following: "PERSON"
Insert: "or conceals material information about the operation of the facility".
7. Page 4, line 2.
Following: "VIOLATION" on line 2
Insert: "(3) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider
(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient, the degree of harm to the health, safety, rights, security, or welfare of a resident or patient; and the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2;
(b) other matters as justice may require."
and renumber

8. Page 4, line 9.
Following: "district" on line 8
Insert: "A penalty collected under this section must be deposited in the patient protection account provided for in [section 7]."
9. Page 7, line 10.
Following: "APPROPRIATE"
Strike: "AND REASONABLE METHOD"
Insert: "means".
10. Page 10, lines 23 and 24.
Following: "CHAPTER"
Insert: "penalties collected pursuant to parts 1 or 2 of this chapter".
11. Page 10, line 25.
Following: "(A)"
Insert: "(b)".
12. Page 11, line 4.
Following: "(B)"
Insert: "(C)".
13. Page 11, lines 7 through 9.
Following: "(a)"
Strike: "TO ADMINISTER" through "RECEIVERSHIP"
Insert: "to pay for the costs of a receivership".
14. Page 11, lines 12 and 13.
Strike: "(c)" to "AND"
15. Page 11, lines 14 through 17.
Strike: (D) in its entirety from "(D)" to "FACILITY".
16. Page 15, lines 16 through 25.
Strike: "(2) through FUND".

DATE 3-17-93

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: HB 107, HB 610, HJ 4

Name (please print)	Representing	Bill No.	Check One	
			Support	Oppose
Dayna Shepherd	DHES	HB610	X	
Katherine S. Orr	DHES	HB610	X	
Daniel J. Shea	A Citizen's Perspective	HJ 4	X	
Teener L. Bartelsen	Legacy Legislators	HJ 4	X	
Kelly Woodward	MS SENIOR CITIZENS	HJ 4	X	
DENZEL C. DAVIS	DHES	HB 610	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Senator Dorothy Eck, Chair, on March 19, 1993,
at 3:00 pm.m

ROLL CALL

Members Present:

Sen. Dorothy Eck, Chair (D)
Sen. Eve Franklin, Vice Chair (D)
Sen. Chris Christiaens (D)
Sen. Terry Klampe (D)
Sen. Kenneth Mesaros (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Tom Hager

Members Absent:

Staff Present: Tom Gomez, Legislative Council
Laura Turman, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 190, HB 148
Executive Action: HB 158, HB 107, HB 610, HJR 4, HB 168

HEARING ON HB 148

Opening Statement by Sponsor:

Rep. Alvin Ellis, Jr., House District 84, said HB 148 is a simple
piece of legislation. He said the important part of the bill is
on Page 2, Line 13.

Proponents' Testimony:

Mary Lou Garrett, Administrative Assistant for the Board of
Chiropractors, provided written testimony from the Chairman of
the Board of Chiropractors. (Exhibit #1)

Questions From Committee Members and Responses:

said it was about licensing, setting up a board, and paying license fees. The Sunrise audit provides limitations. The term "Sunset" refers to the termination of a board, and "Sunrise" refers to the creation of a board.

Sen. Klampe said he had spoken with Mr. Seacat, and he did not like Sunrise audits.

Sen. Towe said Mr. Seacat is the auditor, he does the Sunrise audits. It is a useful function because it saves the Committee from doing all the screening.

Vote:

The motion to NOT CONCUR IN HB 107 CARRIED, with Sen. Franklin voting no. Chairman Eck said she would carry the adverse committee report on the Floor of the Senate

EXECUTIVE ACTION ON HB 610

Motion:

Sen. Towe moved the amendments (Exhibit #4) be adopted.

Discussion:

Sen. Towe went over the amendments (Exhibit #4), saying that the amendments were made at the request of Rose Hughes in the House Committee. Sen. Towe said he had concerns about fees going to a special account rather than the general fund.

Mike Craig, Department of Health, said putting the money into the general fund disallows the Department's access to use it specifically for receivership of a facility or to reimburse patient's lost money.

Sen. Christiaens asked Mr. Craig if some of the funds would go towards the relocation of patients as well. Mr. Craig said that was correct.

Sen. Towe asked Sen. Christiaens if there were a way in the appropriations process to guarantee access to those funds for the purposes outlined by Mr. Craig. Sen. Christiaens said it would have to be requested from the general fund. If it is in an account, it is available to the Department. Information was given in testimony that the account would be less than \$10,000.

Sen. Mesaros asked Mr. Craig about the need for a special account. Mr. Craig said HB 610 provides the Department with the ability to negotiate with a facility that is not in compliance with the law. It is important that patients are not moved. Much of what Rose Hughes wanted is still intact, and a middle ground

has been achieved.

Sen. Mesaros said he was not fond of creating another earmarked account.

Sen. Christiaens said Rose Hughes stated in testimony that the amendments provided a range of sanctions, rather than immediately going to civil penalties.

Vote:

The motion to adopt the amendments carried, with Sen. Mesaros voting no.

Motion/Vote:

Sen. Towe moved HB 610 BE CONCURRED IN AS AMENDED. The motion carried, with Sen. Mesaros voting no. Sen. Towe will carry HB 610 on the Senate Floor.

EXECUTIVE ACTION ON HJR 4

Discussion:

Chairman Eck said information had been provided regarding the number of nurse practitioners in Montana. (Exhibit #5) Chairman Eck said the program needs a million dollar endowment to get started.

Sen. Christiaens said he foresaw the debate on the Floor of the Senate, about future funds for the program.

Sen. Franklin said HJR 4 is very basic and nurse practitioners will be needed in the future. Having programs in the state insures not having recruitment problems.

Sen. Towe asked Sen. Franklin what a nurse practitioner was. Sen. Franklin said a nurse practitioner is a registered nurse who has additional (graduate level) clinical and didactic training and education. Sen. Franklin said there are certificate programs, but these are limited in terms of clinical experience.

Sen. Christiaens said that nurse practitioners could prescribe medication under the supervision of a physician. Sen. Franklin said that was correct, but not all nurse practitioners have prescriptive authority.

Sen. Klampe asked Sen. Franklin why she didn't see nurse practitioners as being "in between" a registered nurse and a physician. Sen. Franklin said she saw the core practices differently. Physicians operate out of a "medical model," and nurses operate out of a "nursing model." There are conceptual differences, but there are also overlapping functions.

ROLL CALL

SENATE COMMITTEE Public Health DATE 3-19-93

[illegible]

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 3
March 22, 1993

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 610 (first reading copy -- blue), respectfully report that House Bill No. 610 be amended as follows and as so amended be concurred in.

Signed: *Dorothy Eck*
Senator Dorothy Eck, Chair

That such amendments read:

1. Title, line 8.

Strike: "AND ADMINISTRATIVE"

2. Page 2, lines 5 through 7.

Following: "[section 1]" on line 5

Strike: remainder of line 5 through "PERSON" on line 7

3. Page 2, line 19.

Following: line 18

Insert: "(2) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider:

(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient; the degree of harm to the health, safety, rights, security, or welfare of a resident or patient; and the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2;

(b) other matters as justice may require."

Renumber: subsequent subsections

4. Page 2, line 21.

Strike: "GENERAL FUND"

Insert: "patient protection account provided for in [section 7]"

5. Page 3, line 3.

Following: "knowingly"

Insert: "conceals material information about the operation of the facility or"

6. Page 4, line 2.

Following: line 1

Insert: "(3) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider:

(a) the gravity of the violation in terms of the degree of

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Amd. Coord.
Sec. of Senate

Sen. Toure
Senator Carrying Bill

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physical or mental harm to a resident or patient; the degree of harm to the health, safety, rights, security, or welfare of a resident or patient; and the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2;

(b) other matters as justice may require."

Renumber: subsequent subsections

7. Page 4, line 12.

Following: line 11

Insert: "(6) A penalty collected under this section must be deposited in the patient protection account provided for in [section 7]."

8. Page 7, line 10.

Following: "APPROPRIATE"

Strike: "AND REASONABLE METHOD"

Insert: "means"

9. Page 10, line 25.

Following: line 24

Insert: "(a) penalties collected pursuant to part 1 or 2 of this chapter;"

Renumber: subsequent subsections

10. Page 11, lines 7 through 9.

Strike: subsection (a) in its entirety

Insert: "(a) to pay for the costs of a receivership; and"

11. Page 11, line 11.

Following: "residents"

Strike: ";

Insert: "."

12. Page 11, lines 12 through 17

Strike: subsections (c) and (d) in their entirety

13. Page 15, line 1.

Strike: "(1)"

14. Page 15, line 7.

Strike: "(a)"

Insert: "(1)"

15. Page 15, line 10.

Strike: "(b)"

Insert: "(2)"

16. Page 15, line 13.

Strike: "(c)"

Insert: "(3)"

17. Page 15, lines 16 through 25.

Strike: subsections (2) and (3) in their entirety

-END-